No. 80-1330

MAR 30 19
CLERK

Supreme Court of the United States

October Term, 1980

DONALD SCHANBARGER,

Petitioner,

-against-

POLICE CHIEF OF THE VILLAGE OF MASSENA, NEW YORK, Dale Wright,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE SECOND CIRCUIT

CARTER, CONBOY, BARDWELL, CASE & BLACKMORE
Attorneys for Respondent
EUGENE E. NAPIERSKI
40 Steuben Street
Albany, New York 12207
Phone: 518-465-3484

TABLE OF CONTENTS

	PAGE
Statement of the Case	2
Summary of Argument	3
Argument	4
Conclusion	6

TABLE OF AUTHORITIES

CASES:	PAGE
Adler v. Medrano, 416 U.S. 802 (1974)	5
Hoffman v. Pursue, Ltd., 420 U.S. 592 (1975)	5
O'Shea v. Littleton, 414 U.S. 488 (1974)	5
Preiser v. Rodriguiz, 411 U.S. 475 (1973)	4
Rizzo v. Goode, 423 U.S. 362 (1976)	4, 5
Steffanelli v. Minard, 342 U.S. 117 (1951)	5
U.S. Constitution, Article III §2	4
Warth v. Seldin, 422 U.S. 490 (1975)	4
Younger v. Harris, 401 U.S. 37 (1971)	5

No. 80-1330

Supreme Court of the United States

October Term, 1980

DONALD SCHANBARGER,

Petitioner,

-against-

POLICE CHIEF OF THE VILLAGE OF MASSENA, NEW YORK, Dale Wright,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE SECOND CIRCUIT

CARTER, CONBOY, BARDWELL, CASE & BLACKMORE
Attorneys for Respondent
EUGENE E. NAPIERSKI
40 Steuben Street
Albany, New York 12207
Phone: 518-465-3484

Statement of the Case

On October 31, 1977, at 2:00 in the morning, the plaintiff, Donald Schanbarger, was walking on a sidewalk adjacent to Main Street in the Village of Massena, New York. He was wearing a hooded jacket with the hood over a portion of his head. He was stopped and questioned by two uniformed Massena police officers, Harold Terry and Michael Kroeger. The plaintiff refused to give his name, a reason for his presence, or any other information.

Several hours earlier, the officers had received a teletype message stating that a certain certified mental patient, Thomas Myers, had been missing from the St. Lawrence State Hospital since 8:00 p.m. of the previous day. This hospital is less than 40 miles from the Village of Massena. The message was an all-point bulletin directed to the police departments in the areas and contained a physical description of the missing patient. The message also stated that the patient had homocidal and suicidal tendencies.

The physical description of the missing mental patient closely fit the description of Mr. Schanbarger. The similarity in the physical description of the two men, together with the lateness of the hour and the fact that Mr. Schanbarger was wearing a jacket with a hood which covered a portion of his head, prompted the officers to stop him and ask him his name, address, and an explanation of his conduct.

Upon being asked his name by the officers, Mr. Schanbarger refused to answer and, indeed, refused at first to stop walking. The officers believed that he was behaving evasively and irrationally. This, together with all the other facts and circumstances, prompted the officers to detain Mr. Schanbarger by bringing him to their headquarters. Mr. Schanbarger was charged with obstructing governmental administration (Penal Law §195.05). Later that morning, after having learned that the escaped mental patient had been found, this charge was dismissed and the plaintiff left the police station without the police officers learning his name or any other information which would identify him.

As a result of this incident, Mr. Schanbarger commenced an action in United States District Court seeking a total of Twenty-Two Million Dollars in damages for what he alleged to be an unconstitutional violation and deprivation of his rights. This action was tried in June of 1979, and after a full trial on the merits covering a span of five days, the jury returned a verdict of no cause of action.

Having been unsuccessful on his claim for money damages, Mr. Schanbarger commenced the present action on December 5, 1979. In his complaint, Mr. Schanbarger seeks various items of equitable relief against the defendant in the nature of orders of injuction and prohibitions restraining and prohibiting said defendant and more particularly, members of the defendant's police department from doing certain things in connection with its functioning as a police department. As part of the relief sought, Mr. Schanbarger asks that the defendant and members of his department, be enjoined from any arrest until someone is appointed by the United States District Court to supervise the defendant, Police Chief, in the discharge of such duties.

On February 4, 1980, the defendant brought on a motion to dismiss the above complaint for failure to state a claim upon which relief can be granted. Upon submission of papers from both parties, and after due deliberation, Judge James T. Foley issued a written decision on February 21, 1980, granting the defendant's motion and dismissing the complaint.

Plaintiff took an appeal from this Judgment and on September 18, 1980, the United States Court of Appeals for the Second Circuit unanimously affirmed the Judgment of the District Court on the opinion of Judge Foley (App. 7-9).

SUMMARY OF AGRUMENT

The District Court properly dismissed the Plaintiff's complaint in view of the fact that the Plaintiff lacked the requisite standing and in view of the fact that the doctrines of res judicata and equitable restraint precluded the court from granting the relief which the Plaintiff sought in his complaint.

Argument

A party seeking injunctive relief must demonstrate to the Court that acts are presently being committed which will result in his irreparable injury. Past exposure to alleged unconstitutional practices does not show a present case or controversy regarding injunctive relief, when unaccompanied by any continuing, present adverse effects. *Rizzo v. Goode,* 423 U.S. 362 (1976). In order to warrant invocation of federal court jurisdiction and to justify exercise of the Court's remedial powers on his behalf, the plaintiff is absolutely required to set forth the existence of a case or controversy between himself and the defendant within the meaning of Article III §2 of the United States Constitution, *Warth v. Seldin,* 422 U.S. 490 (1975). It is respectfully submitted that a review of Mr. Schanbarger's complaint establishes that the plaintiff has totally failed to meet the Article III requirement and thus is without standing to invoke federal court jurisdiction.

A careful reading of the plaintiff's complaint clearly shows the absence of any allegation that the defendant is presently committing or threatening to commit any actions against the plaintiff. Indeed, the sole basis for Mr. Schanbarger's claim for equitable relief is a single incident which occurred back in October of 1977 and which is set forth in detail in the statement of facts portion of this brief. Under the law as enunciated by the United States Supreme Court in *Rizzo, supra,* a single incident which occurred over two and on-half years ago does not set forth a justiciable controversy supporting a claim for equitable relief. The issue of justiciability is the threshold question in every federal case, determining the power of the court to entertain the suit. *Warth v. Seldin, supra.* In view of the plaintiff's failure to allege facts sufficient to meet this threshold requirement, the District Court had no choice but to dismiss Mr. Schanbarger's complaint.

In addition to the plaintiff's lack of standing, there are a number of other reasons which mandated the District Court's dismissal of this complaint. As Judge Foley indicated in his decision (App. 1-6), the doctrine of res judicata is fully applicable in actions brought under 42 USC §1983, citing *Preiser v. Rodriguiz,* 411 US 475, 497 (1973). As pointed out in the statement of facts, Mr. Schanbarger

had a full and fair opportunity to litigate the issue of whether the police officers' conduct was reasonable and proper. The same issue forms the basis of his current action. It was his decision to seek redress in the form of an action for money damages. Having been unsuccessful in this endeavor, he is now attempting to pursue a claim for equitable relief. Mr. Schanbarger has had his day in Court. To allow him to pursue a claim in equity would be to work an undue hardship on the defendant. It is respectfully submitted that the policy underlying the doctrine of res judicata precludes the plaintiff from bringing this follow-up claim for equitable relief.

Judge Foley, in dismissing Mr. Schanbarger's complaint, also found that serious questions exist concerning the propriety of a federal court enjoining police from conduct that might be lawful (App. 1-6); citing *Allee v. Medrano*, 416 US 302, 813-816 (1974) (App. 1-6). He also held the doctrine of equitable restraint to be applicable (App. 1-6), citing *Younger v. Harris*, 401 US 37 (1971) and *Hoffman v. Pursue, Ltd.*, 420 US 592 (1975). An injunction is an extraordinary remedy which should be exercised sparingly and with utmost caution. This settled rule of law becomes particularly true when the federal courts are asked to enjoin the activity of a local governmental entity. Important considerations of federalism are additional factors which weigh against any such action. Federal Courts must be constantly mindful of the "special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law." *Rizzo v. Goode, supra; O'Shea v. Littleton*, 414 US 488 (1974); *Stefanelli v. Minard*, 342 US 117 (1951).

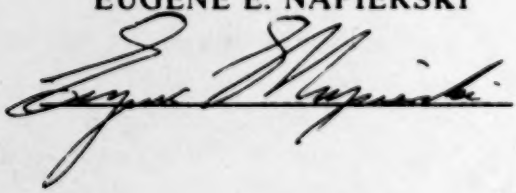
The United States Supreme Court in *Rizzo*, further held that where, as in the instant action, injunctive relief is sought against those in charge of a local government entity, the principles of equity militate heavily against the grant of an injunctive except under the most extraordinary of circumstances. The Court in *Rizzo* quoted the previous decision in *O'Shea v. Littleton, supra*, which stated that "a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings is in sharp conflict with the principles of equitable restraint . . . " and held that the above principle is equally applicable where the intrusion involves the activity of a local government entity.

Clearly the conduct which forms the basis of Mr. Schanbarger's complaint cannot be found to constitute "most extraordinary circumstances" as envisioned by the Supreme Court in *Rizzo*. Police officers have the responsibility for the protection of the lives and property of our citizens. On the morning of October 31, 1977, under all of the above-mentioned circumstances, the officers reasonably and in good faith detained Mr. Schanbarger. In fact, had they not done so, they would have been remiss in their duties. It should be noted that this detention which forms the basis for Mr. Schanbarger's claim for equitable relief could easily have been avoided had Mr. Schanbarger simply provided the officers with his name and a brief explanation of his presence. Despite all of the foregoings, Mr. Schanbarger is asking this Court to in effect assume control and supervision of the Village of Massena police force. It is respectfully submitted that such judicial intervention is in direct conflict with the pronouncements of the Supreme Court regarding federal equitable restraint, and accordingly, upon this ground, as well as those previously discussed, the plaintiff has failed to state a claim upon which relief can be granted.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

EUGENE E. NAPIERSKI



Dated: Albany, New York
March, 1981